In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 935

FORREST VILLAGE, INC., PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner is the owner of a multi-family rental housing project in Philadelphia. The project, constructed in 1949, was financed partially by two mortgages, totalling $601,500.00, which were insured by the Federal Housing Administration (FHA) pursuant to section 608 of the National Housing Act (12 U.S.C. 1743). With the mortgage, petitioner expressly assumed liability for "the adjusted premium charge referred to in section 2, Article II, of the applicable Regulations for Section 608." Those regula-

tions (24 C.F.R. (1949 ed.) 282.4) provide, in substance, that if an insured mortgage is discharged in full prior to maturity, the mortgagor will pay FHA an adjusted premium charge of 1% of the original face amount of the prepaid mortgage.

In February 1964, petitioner secured conventional refinancing of the insured mortgages. When it was released from the insured mortgage, petitioner was required to and did pay the 1% adjusted premium charge established by the regulation. Petitioner then sued in the Court of Claims to recover that charge. By order of October 29, 1965, the Court below granted the government's motion for judgment on the pleadings "on the basis of" its decision in *Camellia Apartments, Inc.* v. *United States*, 334 F. 2d 667, certiorari denied, 379 U.S. 963 (Pet. App. 1a).

As petitioner apparently concedes (Pet. 7), the issues presented in this case are the same as those presented in *Camellia Apartments, supra.* Petitioner's objections to the decision here—objections which it says were not raised in the petition for a writ of certiorari in *Camellia Apartments*—neither detract from the correctness of the decision of the court below nor present issues warranting review by this Court.

1. Section 603(c) of the National Housing Act (12 U.S.C. 1738) provides:

> * * * In the event that the principal obligation of any mortgage accepted for insurance under this title is paid in full prior to the maturity date, the Administrator is further authorized in his discretion to require the payment by the mort-

> gagee of an adjusted premium charge in such amount as the Administrator determines to be equitable * * *.

Petitioner would read this language to require the Federal Housing Commissioner [1] to determine, by adjudication, whether each mortgagor who prepays an insured mortgage should be required to pay any adjusted premium charge; it would have the imposition, and the amount, of such a charge determined on an *ad hoc* basis. This reading certainly is not required by the language of the statute. It would impose a heavy burden on the Commissioner. And, most importantly, it would defeat the statutory purpose. The Commissioner's regulation imposing a uniform prepayment charge is designed, as the Court of Claims observed in *Camellia Apartments*, to "deter mortgagors whose loss potential was relatively slight from turning to private financing, leaving it with only those mortgages that had no appeal to non-insured lenders" (334 F. 2d at 671). To assess prepayment penalties on an *ad hoc* basis would deprive FHA of the deterent effect of the regulation and would permit inequality of treatment.[2]

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[1] By section 3 of Reorganization Plan No. 3 of 1947, 61 Stat. 954, the title of the Federal Housing Administrator was changed to the "Federal Housing Commissioner."

[2] In *Camellia Apartments*, too, the Court of Claims rejected the "contention that the Commissioner shirked his duty in deciding [the case] under a general regulation and by failing to accord * * * an evidentiary hearing" (334 F. 2d at 672). Empowering the Commissioner to establish an "equitable" prepayment charge clearly is not an unlawful delegation of legislative authority.

2. Petitioner also objects to FHA's refusal to permit it to prepay, without charge, 15% of the original face amount of the mortgages. It relies on 24 C.F.R. 282.4(c)(2), which waives the adjusted premium charge

> [w]here the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15% of the original face amount of the mortgage.

The short answer is that this waiver applies only where the acceleration is "*solely* by reason of *partial* prepayments made * * * *in any one calendar year*"; as the court below said in *Camellia Apartments*, "[s]ince plaintiffs paid more than the maximum permissible amount in one such year, they do not come within the terms of this exception" (334 F. 2d at 672).

In short, petitioner voluntarily assumed the responsibilities imposed by the applicable regulation.

THURGOOD MARSHALL,
Solicitor General.

FEBRUARY 1966.

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